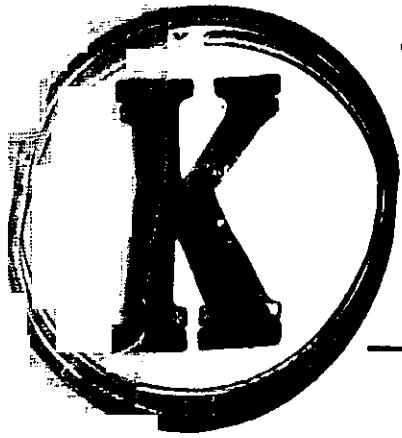




1943.

File No. O. Ct. Fees / 43

Legal DEPARTMENT
A BRANCH

Subject:— Opinions under the
Court fees Act, 1870

P-13
E

File No. O. Ct. Fees / 43
Std. Sectt. Slip 24 B e.

271 —A

C O N T E N T S

Legal Department File No. O.Court Fees/43.

Sr. No.	R.I.No./O.No.	Subject.	Pages.
------------	---------------	----------	--------

Opinions Under the Court Fees Act, 1870.

- | | | | |
|----|---|---|---------|
| 1) | O.No.3032/26/1/43 | Question 1) Whether a penalty levied under section 198 of the Court fees Act, can be recovered as an arrear of land revenue under sec. 197, if not,
2) Whether it can be enforced in any other manner. | 1 - 6. |
| 2) | O.No.4742/8-7-43.
R.I.No.7295/13-7-43.
(Adv.General's
opinion No.14 dt.
12-7-43). | Re: _____ Do _____ | 7- 16. |
| 3) | O.No.8474/16-11-43. | Question whether an application under sec. 73. of the Indian Registration Act is chargeable under the court fees Act. | 17 -18. |

BIR.
22/5.
50.

1.

No. 3032

Office of the
Remembrancer of Legal Affairs,
Dorsey Castle, 26th April 1943.

From

P.H. Mee, Esquire, Barr-at-Law, I.C.S.,
Remembrancer of Legal Affairs.

To

The Superintendent of Stamps,
Dorsey.

Re: Estate of R.D. Patel deceased.

Sir,

I have the honour to forward herewith my opinion
on the points raised in your letter No.2423/P dated 25th March
1943.

The documents sent with your letter under reference
are returned herewith.

Your obedient servant,

Sd/.....
For Remembrancer of Legal Affairs.

Enclst.

MM.

21/5.

5a.

The two questions which appear to have been referred to the R.L.A. for consideration are:-

(1) Whether a penalty levied under section 19 E of the Court-fees Act, 1870 can be recovered ~~as~~ as an arrear of land revenue under section 19 J; if not,

(2) whether it can be enforced in any other manner.

2. Section 19 J make no reference to section 19E. Consequently the penalty levied under section 19E cannot be recovered as an arrear of land revenue under section 19 J. The only course open to Government would be to file a suit for the purpose of recovering the penalty (see *Milhanja V. Secy. of State*, 20 C.N.E. 504 at p.506; *Ayyar's Court fees Act*, 2nd edition, p.329).

3. This opinion should not however be interpreted as confirming the view taken by the Superintendent of Stamps in his letter No.2423/F dated 29th March 1943 that the facts of the case under consideration warrant the levy of a penalty under section 19E of the Court-fees Act. From the detailed recital of facts in the Superintendent's letter the more crucial question for consideration would appear to be whether the case attracts the provisions of sections 19E and 19 G of the Court-fees Act.

4. The total value of the estate for which probate was applied is a little over Rs. 19 lakhs. The probate fees together with the penalties sought to be imposed under sections 19 E and 19J amount to the somewhat ²fabulous figure of over Rs. 26 lakhs which, in the event of a suit being filed for its recovery, is likely to evoke adverse comments from the trial court. On the merits also, I do not think that the case comes within the mischief of section 19E. This section can apply only in cases where the petitioner on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be. In 43 Cal.230 at p.237 it was observed that section 19E *inter alia* "contemplates that the estimated value of the estate is less than that the value has afterwards proved to be". In the case under consideration by reason of the difficulty, under the circumstances mentioned in the Schedule of assets annexed to the

the petition, of ascertaining the value of the claim of the estate against the brothers of the deceased, no final estimate was made in the application for probate, of the total value of the assets left by the deceased. The probate was applied for and granted, pending the ascertainment of the value of the said claim, on payment of court fees calculated on the value of part of the assets then ascertained, the petitioners having undertaken to pay further Court fees on the amount of the value of the said claim when ascertained, There being no final and definite estimate of the total value of the estate of the deceased in the petition for grant, it cannot be said that the petitioners on the applying for grant estimated the estate to be of less value than the same afterwards proved to be on ascertainment of the value of the said claim. Section 19 E accordingly cannot apply to the sum of Rs.331225-10-0 which, under the compromise arrived at between the parties, represents the value of the claim of estate against the brothers of the deceased.

Section 19 G provides that where too low a court fees has been paid in consequence of its not being known that some particular part of the estate belonged to the deceased, the penalty prescribed by the section may be levied, on the failure of the executor or administrator to pay the balance of the proper court fees within the time mentioned in section. Under this section it is not necessary that the low court fee should have been paid in consequence of the value of the estate having been underestimated. In the schedule of assets the petitioners, in the case under consideration have stated that they were then unable to ascertain the value of the claim against the brothers of the deceased, But, by reason of their statement that the brothers contended that nothing was due from them it might be argued that at the date of the application the petitioners did not know that any amount was in fact legally due and payable to the estate by the brothers. Accordingly the low court fee was paid in terms of the provisions of section 19 G, by reason of the petitioners not having known at the same time that any amount was legally due to the estate by the brothers and the executors not having paid the additional court fee within six months after the compromise was arrived at, the penalties prescribed by this section would be leviable as regards the sum of Rs. 331225-10-0.

Regarding the other amount of Rs.3283-14-3 the executors in their affidavit sworn on the 19th November 1942 have stated that this amount was omitted

from the schedule of assets annexed to the petition by a oversight. A lower court fee has been paid by reason of the omission by mistake to include this amount in the petition. Under section 19 G the penalty is leviable if the executor fails to pay the amount wanting to make up the proper court fee, within six months after the discovery of the mistake. The affidavit referred to above does not state expressly when the mistake was discovered, though the language suggests that it was discovered about the time when the affidavit was sworn. Accordingly a penalty ~~will~~ could be levied under this section only if the Superintendent is prepared to refute the statement in the affidavit and in the letter of attorneys for the executors that the mistake was discovered just prior to the date of the affidavit.

Kd. P.E.W. 22/4.

Remembrancer of Legal Affairs.

Statement of the Case for the Additional Probate Duty

It appears that a probate duty of Rs.1,01,451-6-0 was paid by the executors on the value of the estate of the deceased B.D. Patel estimated at Rs.15,86,020/4. At the time of the application for Probate, the petitioners stated that they were not able to ascertain the amount that would be payable to the estate by the deceased's two brothers - Dinshaw D. Patel and Hirramshah B. Patel. The petitioners therefore undertook to pay the additional probate duty due on the sum which would be subsequently recovered from the said two brothers of the deceased. (Please see note on page 10 of the Probate). On 16th August 1940 the petitioners obtained a release in respect of the sum of Rs.3,31,225-10-0 (mentioned in the first affidavit, dated 16th November 1942) from the two brothers of the deceased, but they failed to mention this fact in the inventory of the estate which was required by section 317(1) of the Indian Succession Act, 1925, filed in the High Court on 12th September 1940. They did not apply to pay additional probate duty due on this amount till 21st/22nd December 1942 in spite of the previous undertaking given by them when the petition for Probate was filed. Another amount of Rs.3,283-14-3 mentioned in para.1 of the affidavit of 19th November 1942 was recovered by the petitioners on 4th April 1939 and the application for paying the additional duty has been made on 21st December 1942. In this case also the petitioners failed to apply with ~~the~~ in the prescribed period of six months laid down in section 19-0 of the Court-fees Act. The

Superintendent therefore wrote to the petitioners inquiring why a maximum penalty under sections 19-E and 19-G should not be levied. The Solicitors to the petitioners contended that neither section 19-B nor section 19-G had application to this case because the undertaking given by the petitioners showed that they did not estimate the estate to be of less value. But the Superintendent took the view that the case fell under sections 19-E and 19-G inasmuch as too low a court fee was paid in the first instance and the application to pay the additional duty was not made within six months after the debt was realised. He was, however, doubtful whether the penalty levied under section 19-E could be recovered under section 19-J and referred the case for R.L.A.'s opinion.

2. The R.L.A.'s opinion dated 22nd April 1943 was as follows:-

"The two questions which appear to have been referred to the R.L.A. for consideration are:-

(1) Whether a penalty levied under section 19-E of the Court fees Acts, 1870 can be recovered as an arrear of land revenue under section 19-J; if not,

(2) Whether it can be enforced in any other manner.

Section 19-J makes no reference to section 19-E. Consequently the penalty levied under section 19-E cannot be recovered as an arrear of land revenue under section 19-J. The only course open to Government would be to file a suit for the purposes of recovering the penalty (See *Nikunja v. Secy. of State*, 20 C.W.F. 504 at p.506; Ayyar's Court-fees Act, 2nd edition, page 329).

This opinion should not however be interpreted as confirming the view taken by the Superintendent of Stamps in his letter No. 2423/P dated 25th March 1943 that the facts of the case under consideration warrant the levy of a penalty under section 19-E of the Court-fees Act. From the detailed recital of facts in the Superintendent's letter the more crucial question for consideration would appear to be whether the case attracts the provisions of sections 19-E and 19-G of the Court-fees Act.

The total value of the estate for which Probate was applied is a little over Rs. 19 lakhs. the probate fees together with the penalties sought to be imposed under sections 19-E and 19-G amount to the somewhat fantastic figure of over Rs. 26 lakhs which, in the event of a suit being filed for its recovery, is likely to evoke adverse comments from the trial Court. On merits also, I do not think that the case comes within the mischief of section 19-E. This section can apply only in cases where the petitioner on applying for Probate or letters of administration has estimated the estate of the deceased to be of less value

than the same has afterwards proved to be. In 43 Cal.230 (at p.237) it was observed that section 19-E inter alia "contemplates that the estimated value of the estate ~~is~~ is less than what the value has afterwards proved to be." In the case under consideration by reason of the difficulty, under the circumstances mentioned in the schedule of assets annexed to the petition, of ascertaining the value of the claim of the estate against the brothers of the deceased, no final estimate was made in the application for Probate, of the total value of the assets left by the deceased. The ~~same~~ Probate was applied for and granted, pending the ascertainment of the value of the said claim, on payment of Court-fees calculated on the value of the part of the assets then ascertained, the petitioners having ~~not~~ undertaken to pay further court-fees on the amount of the value of the said claim when ascertained. There being no final and definite estimate of the total value of the estate of the deceased in the petition for grant, it cannot be said that the petitioner's on applying for grant estimated the estate to be of less value than the same afterwards proved to be on ascertainment of the value of the said claim. Section 19-E accordingly cannot apply to the sum of Rs.3,31,225-10-0 which, under the compromise arrived at between the parties, represents the value of the claim of the estate against the brothers of the deceased

Section 19-G provides that where too low a court-fee has been paid in consequence of its not being known that some particular parts of the estate belonged to the deceased, the penalty prescribed by the section may be levied, on the failure of the executor or administrator to pay the balance of the proper court fee within the time mentioned in section. Under this section it is not necessary that the low court fee should have been paid in consequence of the value of the ~~the~~ estate having been underestimated. In the schedule of assets the petitioners, in the case under consideration, have stated that they were then unable to ascertain the value of the claim against the brothers of the deceased. But, by reason of their statement that the brothers contended that nothing was due from them it might be ~~be~~ argued that at the date of the application the petitioners did not know that any amount was in fact legally due and payable to the estate by the brothers. Accordingly the low court fee was paid in terms of the provisions of section 19-G by reason of the petitioners not having known at the time that any amount was legally due to the estate by the brothers

and the executors not having paid the additional court fee within six months after the compromise was arrived at the penalties prescribed by this section would be leviable as regards the sum of Rs.3,31,225-10-0.

Regarding the other amount of Rs.3,283-1/-3 the executors in their affidavit sworn on the 19th November 1942 have stated that this amount was omitted from the Schedule of assets annexed to the petition by an oversight. A lower court fee has been paid by reason of the omission by mistake to include this amount in the petition. Under section 19-G the penalty is leviable if the executor fails to pay the amount wanting to make up the proper court fee, within ~~x~~ six months after the discovery of the mistake. The affidavit referred to above does not state expressly when the mistake was discovered though the language suggests that it was discovered about the time when the affidavit was sworn. Accordingly a penalty could be levied under this section only if the Superintendent is prepared to refute the statement in the affidavit and in the letter of the attorneys for the executors that the mistake was discovered just prior to the date of the affidavit."

3. The Superintendent of Stamps in his letter of 3rd June 1943 has requested the R.L.A. to consider his view that the application in respect of the sum of Rs. 3,31,225-10-0, falls under section 19-G and not under section 19-E of the Court fees Act. The R.L.A. has considered the grounds urged by the Superintendent in his letter, but sees no good reason for revising his previous opinion. As the question is an important one the Advocate General is kindly requested to express his views in the matter. The original Probate and the copy of the affidavit ~~x~~ dated 16th November 1942 accompany.

P.N.Moss..

Remembrancer of Legal Affairs.

U.R. to the Adv. Genl. No.4741, dated the 8th July 1943.

ENR./

21/5.

5c.

Bombay, 12th July 1943.

Subject:- Opinions under the Court Fees Act, 1870

Re: U.R. To The Advocate General
No. 4741 Bombay dated 8th July 1943.

OPINION.

The first question to consider is whether under the circumstances of this case Section 19(a) of the Court Fees Act is applicable as regards the sum of Rs. 3,21,225-10-0. The Section being a penal one has to be construed strictly in favour of the subject. In the Schedule to the petition for probate, the petitioners stated that the brothers of the testator denied that ~~any~~ anything was due by them to the estate of the deceased. Further, that, even if anything was legally due, they did not know what amount they would be able to recover in respect of the debt. They mentioned that they were unable to state what such amount would be and they undertook to pay probate duty on such sum as they might be able to recover. The matter was proceeded with on that footing and probate was granted to them. This was in my opinion irregular. The proper thing to do was to call upon the petitioners to state what they considered to be the fair value of the debt for purposes of probate duty. See the judgment in 30 Bombay Law Reporter Page 854. Notice of the application for probate was given to the Chief Revenue controlling Authority under sub-section 2 of Section 19(a) of the Court Fees Act and that authority could have called upon the petitioners to amend the valuation by putting in the Schedule what they considered to be the fair value of the debt. This, however, was not done. The result in my opinion is that it cannot be said that the petitioners estimated the estate to be of less value than the same afterwards proved

19.

to be and have in consequence paid too low a Court fee thereon. What they did was that they refused to estimate the value of this part of the estate and undertook to pay probate duty on such amount as they might be able to recover. The result in my opinion was that too low a court fee was paid on the probate in consequence of a mistake and the section applicable to the case is 19(g) and not 19(e).

As regards the sum of Rs.3,283-14-3 the penalty has been levied by the Collector under Section 19(g) and no question arises in respect thereof. The only question is whether the application to pay the difference in duty was made within six months after the discovery of the mistake or of the effects not known at the time to have belonged to the deceased. The affidavit of the petitioner seems to show that the mistake was discovered about the same time when the affidavit was sworn. If the Superintendent of Stamps is satisfied that the application was not made within six months from the discovery of the mistake, it is open to him to levy a penalty under ~~the~~ Section 19(g).

As regards the question whether the penalty, if any, levied under Section 19(e) of the Court Fees Act can be recovered as an arrear of land revenue under Section 19(j), I am clearly of opinion that it cannot be so recovered. Section 19(e) has been deliberately omitted from Sub-section 1 of Section 19(j). It will be noticed that Sub-section 2 of Section 19(j) does refer to 19(e).

15.

If it is open to the authorities concerned to levy a penalty under Section 19(e) in respect of the sum of of Rs.3,31,825-10-0 and such penalty is levied and not paid, the proper procedure to recover it is by filing a suit.

N. P. Engineer,

Advocate General,
12 July 1943.

DH 7

21/5.

50.

The question for the consideration of the Remuneration of Legal Affairs is whether an application under section 73 of the Indian Registration Act is chargeable under the Court Fees Act.

2. An application under section 73 of the Indian Registration Act will not be liable to court fees unless it is of the kind specified in the First or Second Schedule to the Court Fees Act, 1870 (See section 6 of the Court Fees Act). The relevant provision is Article I in Schedule II. It does not appear that an application under section 73 of the Indian Registration Act is of the kind specified in Article I in Schedule II. Consequently an application under section 73 of the Indian Registration Act is not liable to Court-fees.

3. It is not correct to say that there is not distinction between an appeal and an application. Section 72 of the Indian Registration Act provides for an appeal, while section 73 provides for an application. Apparently the Indian Registration Act itself makes a distinction between an appeal and an application. Consequently an application under section 73 cannot be treated as an appeal for purposes of court-fees. The practice hitherto followed by the Registration Department is not correct.

84/... P.N.N. 16/11.

Remuneration of Legal Affairs.

U.E. to R.D. No. 8474.

Dated 16th November 1943.

DVR.

21/5

5a.